FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 364/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : March 12, 2007.

Heard Mrs. Jawalkar, for the appellant, and Shri V.G. Wankhede, for the respondent no.1.

The appellant is the original plaintiff. A suit was filed by the plaintiff for specific performance of contract to sell the suit land to the plaintiff. According to the plaintiff, the defendants had handed over the possession of the suit land to the plaintiff at the time of execution of the agreement of sale and the defendants also admitted the possession of the property in lieu of the payment. The defendants resisted the claim of the plaintiff and pleaded in the written statement that the plaintiff indulges in money lending and had got the agreement of sale dated 23/4/1994 executed towards the security of the loan advanced by the plaintiff to the defendants. According to the defendants, the transaction was a loan transaction and not a sale transaction as pleaded by the

plaintiff.

Both the Courts, after considering the evidence rendered by the parties on record, came to a conclusion that the plaintiff had failed to prove that the transaction dated 23/4/1994 was an agreement of sale in respect of the suit property. The Courts further observed that the plaintiff had further failed to prove that the plaintiff was entitled to specific performance of contract. The Courts held that the plaintiff was in possession of the suit field. Both the Courts have concurrently held that the defendants have proved that the transaction between the defendant no.1 and the plaintiff was a money lending transaction. Both the Courts, therefore, consequently, dismissed the suit filed by the plaintiff.

The findings recorded by both the Courts are pure findings of facts based on the oral and documentary evidence tendered by the parties. The witnesses examined on behalf of the plaintiff also supported the case of the defendants. The findings recorded by both the Courts, do not give rise to any substantial question of law. Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP